

REMARKS/ARGUMENTS

In the Office Action, the Examiner has objected Claim 53 as being substantially a duplicate of Claim 52, has rejected Claims 1-2, 5-11 and 13-60 under 35 U.S.C. § 103 as being unpatentable over Lyden et al. (5,625,964) in view of Frachey (5,092,060) and has rejected Claims 3-4 and 12 under 35 U.S.C. § 103 as being unpatentable over Lyden '964 in view of Frachey '060 and Chee (5,384,977). New Claims 61-63 have been added and thus Claims 1-63 remain active.

The discussion granted by Examiner Stashick is hereby acknowledged and is sincerely appreciated. During the discussion, the remarks set forth below were thoroughly discussed with the Examiner. Upon conclusion of the discussion, while the Examiner could not commit to indicating allowance of the application since an updated search and a further review of the amendment is needed, it was agreed that the suggested amendments appear to be helpful in furthering the prosecution of the present application. The Examiner was also invited to call Applicants' attorney should any question arise with regard to this amendment.

Considering first then the rejection of Claim 53 as being objected to under 37 C.F.R. § 1.75, it is to be noted that the language of Claim 52 has now been appropriately revised so as to be distinguishable from the invention claimed in Claim 53.

Considering next then the rejection of Claims 1-2, 5-11 and 13-60 under 35 U.S.C. § 103 as being unpatentable over Lyden et al. '964 in view of Frachey '060, it is to be noted that Claims 1 and 57 have now been amended to specify that at least one of the elements of the first battery extends across substantially an entire width portion of the first casing. In this regard, the Examiner's attention is called to the illustration shown in Figure 59 which indicates that the lower casing in that figure has deformable element in the first battery which extends across substantially an entire width portion of such first casing. To the contrary, it is noted that Lyden et al. '964 has been acknowledged by the Examiner as not containing any

deformable elements. While the Examiner cited Frachey et al. '060 for the teaching of deformable elements, as can be appreciated from a review of Figures 1-4 thereof, there is no teaching of at least one of the deformable elements extending across substantially an entire width portion of such casing. Instead, a plurality of deformable elements are required to extend across this width portion of the casing 13 or casing 13A. In view of the reduction in the number of parts required in forming the insert of the present invention utilizing this feature and in view of the substantially different elastic characteristics resulting therefrom, it is submitted that each of Claims 1 and 57 as well as all claims dependent therefrom clearly patentably define over the above-noted references. It is further noted in this regard that corresponding method claims have now been added to Claim 59.

It is further noted that each of Claims 1 and 31 claim the fact that the first and second casings are interconnected by a bridging portion which is aligned with a flex line of the foot of a user. While the Examiner has cited Frachey as teaching "longitudinal lines of the batteries of elements are shown to be aligned with the flex lines of the user's foot", such does not teach a bridging portion between first and second casings with the bridging portion being aligned with the flex line of a foot of a user, as presently claimed. In addition, it is noted that Lyden has no teaching or disclosure of a bridging portion aligned with the flex line of a foot of a user nor does Frachey. Accordingly, it is submitted that each of Claims 1 and 31 also patentably define over these references on these basis. It is to be further noted that independent Claims 57 and 59 also contain these limitations along with the limitations regarding the fact that at least one of the elements of the first battery extends substantially across an entire width portion of the first casing. Accordingly, it is submitted that these independent claims also merit indication of allowability.

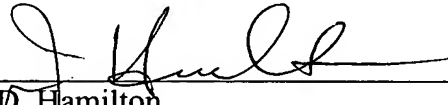
Considering next then the rejection of Claims 3-4 and 12 under 35 U.S.C. § 103 as being unpatentable over Lyden '964 in view of Frachey et al. '060 and Chee '977, it is

respectfully submitted that Chee fails to rectify the deficiencies noted hereinabove regarding Lyden and Frachey et al. and also requires a plurality of deformable elements in spanning the width portion of the casing shown therein. It is therefore submitted that each of the independent claims of the present application as well as Claims 3-4 and 12 also patentably define over the prior art of record and thus merit indication of allowability.

In view of the foregoing, an early and favorable Office Action is believed to be in order and the same is hereby respectfully requested.

Respectfully submitted,

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